IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No.306 of 2001.

Judgment reserved on: 21.3.2007

Date of decision: 24.04.2007

Kaushal Kumar Chauhan **Petitioner**

Versus

The United Commercial Bank and Anr. **Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting ?[1] *No.*

For the Petitioner: **Mr. R.D. Kaundal, Advocate.**

For the Respondents: **Mr. K.D. Sood, Advocate.**

Dev Darshan Sud, J

The petitioner has approached this Court under Article 226 of the Constitution of India, challenging the action of the respondents whereby his case for compassionate employment has been rejected.

Brief facts of the case are that the father of petitioner was appointed as Peon-cum-Cleaner in the United Commercial Bank Branch, Badripur, Paonta Sahib, District Sirmaur on 5.10.1977. When he was posted as cashier in the bank at Kala Amb, he died on 8.8.1998 having put in more than 21 years of service. The family being in distressed circumstances with no adequate source of livelihood, an application was made by the petitioner, who is the son of the deceased, requesting that he may be

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***? Yes

appointed on a suitable post on compassionate ground. The other heirs viz wife and daughters gave their no objection to the appointment of the petitioner. The petitioner alleges that he has passed the Senior Secondary School Examination and he being the only son of the deceased, was entitled to be adjusted against a suitable post with the respondent bank. The petitioner submits that he belongs to 'Koli' community which is recognized a Scheduled Caste as notified by the Government of Himachal Pradesh.

It seems that the case of the petitioner was considered and rejected by the respondents on the grounds that in terms of Circular No.CHO/DMG/19/99 dated 21.9.1999, the competent authority has allowed lump sum payment of Rs.1,50,000/- to the widow of deceased in lieu of compassionate appointment and in terms of the guidelines applicable, the petitioner is not entitled to any employment. The criteria/policy applicable are reproduced in the writ petition.

It was submitted by the learned counsel for the petitioner that the respondents have wrongly and arbitrarily assessed the income available to the family at 60% of the gross emoluments of the deceased to deny the benefit of employment to the petitioner. A major portion of the amount which was received by the mother of the petitioner including the element of interest on such receipts was paid for defraying debts of the deceased raised for the benefit of the entire family including loan for building of a house etc. In case the

calculations are made according to the policy of the respondents, the bar under clauses (b) and (d) of the policy as pleaded by the respondents is not attracted. The relevant clauses of the policy are reproduced hereunder:-

> **"Eligibility for consideration of compassionate appointment/payment of lump sum:**
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> (a) Dependents of the employees who die after attaining the age of 55 years are not eligible for compassionate appointment/ payment of lump sum;
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> (b) If the monthly income of the bereaved family (calculated as per clause 8 below) is 60 percent or more of the gross salary which the deceased employee was drawing at the time of his death, such cases will not be considered for compassionate appointment/ payment of lump sum;
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> (c) If the monthly income of the bereaved family (calculated as per clause 8 below) is less than 60 percent of the gross salary which the deceased employee was drawing at the time of his death, such cases will be initially considered for payment of lump sum as under:-
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> (i) Officer employee -Rs.2 lacs
> (ii) Clerical staff -Rs.1.5 lacs
> (iii) Subordinate staff -Rs.1 lac
>
> And thereby if the monthly income reaches/crosses 60 percent of the gross salary which the deceased employee was drawing at the time of his death, such cases will not be considered for compassionate appointment, but will be eligible for payment of lump sum as stipulated above.
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> (d) In case the payment of such lump sum amount also does not result in the increase of monthly income to the level of 60 per cent or more of the gross salary of the deceased employee drawing at the time of his death, there would be no payment of lump sum, but such cases will be considered for compassionate appointment subject to other terms and conditions."

Learned counsel has drawn my attention to paragraphs 10 and 11 of the pleadings giving the details of the amount received and working out the percentage in terms of the gross salary of the deceased. These very averments have been reiterated in the rejoinder. He has referred to paragraph 17 of the rejoinder in which it has been submitted that the payment of Rs.1,50,000/- was received under protest and the calculations have not been made in accordance with the existing facts. The lump sum payment is payable only if the income of the family of the deceased exceeds 60% of the salary drawn by the deceased before his death. Learned counsel appearing for the parties have drawn my attention to a number of decisions of the Hon'ble Supreme Court in ***Indian Drugs and Pharmaceuticals Limited*** Vs. ***Workmen, Indian Drugs and Pharmaceuticals Limited***, ***(2207) 1 SCC 408***, ***National Institute of Technology and others*** Vs. ***Niraj Kumar Singh***, ***(2007) 2 SCC 481***, ***Govind Prakash Verma*** Vs. ***Life Insurance Corporation of India and others***, ***(2005) 10 SCC 289*** and of this Court in ***Devender Singh*** Vs. ***State Bank of India and another***, ***2006 (1) Shim. L.C. 236***, in support of his contention showing the circumstances under which the compassionate appointment can be made. It is unnecessary for the present to invoke the aid of the principles as laid down by the Hon'ble Supreme Court. Compassionate appointment is granted to the family of the deceased to tide over the immediate financial difficulty which the family is facing because of the loss of the bread winner. It is not a matter of right to be enforced but is

governed by the rules/policy applicable. Learned counsel for the petitioner has submitted that the sums/amounts included in the calculations of the gross amount held available to the family are to be excluded. Learned counsel for the respondent submits that the calculations have been made in accordance with the existing facts and clause 8 of the policy.

From the material on the record, I find that the order Annexure R-2 does not disclose the reasons on the basis of which a conclusion has been arrived at, that the financial position of the family, i.e., the monthly income arising out of the assets of the deceased employee, the amount of family pension etc. disentitle the petitioner from being granted compassionate appointment. Surely, the respondents would be alive to the situation of those of its employees who have died in harness and whose families are in distressed circumstances require support which should be realistic and not illusory. Denial on the basis of purported compliance to the circular/policy is not sufficient. A reasoned decision should have been given to the objection raised by the petitioner that the criteria of income used to disentitle him for employment, is satisfied. It is not merely sufficient to say that the case of the petitioner is covered by a particular provision of the policy. The facts pleaded by the petitioner to show that the financial distress of the family is exacerbated should been considered as also as to why the objections on the

calculations are not tenable should have been clearly spelt out.

In the totality of circumstances, I am of the opinion that the matter requires to be reconsidered by the respondents. This writ petition is accordingly allowed and direction is issued to the respondents to reconsider the case of the petitioner. In case the petitioner so desires, he may make fresh representation to the respondents setting out all the grounds available to him on the basis of which he claims compassionate appointment including financial distress and the present condition of the family. Such representation shall be made within a period of two months from today. The petitioner, if he so desires, will be heard in person and his representation/application will be disposed of by a speaking order. The writ petition is allowed to this extent and direction is issued to the respondents to decide such representation within a period of three months from the date on which it is made. There shall be no order as to costs.

April 24, 2007 **(Dev Darshan Sud), J**
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